

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9446 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AHMED HUSSAIN @ BARSATY

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR DN PATEL ASST. GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 03/03/2000

ORAL JUDGEMENT

The detenu has preferred this petition challenging the order of detention dated 28.7.1999 passed by the Commissioner of Police, Ahmedabad under provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the Act). Copy of the

detention order is produced at Annexure 'A' to this petition and grounds of detention at Annexure 'C'.

2. Reading the grounds of detention it appears that the detenu is facing prosecution atleast in two cases, one for offences punishable under sections 324 and 504 of the Indian Penal Code registered at Gomtipur Police Station CR No. 236/94 on 10.12.1994 and the other for an offence punishable under section 379 of the Indian Penal Code registered at Gomtipur Police Station CR No. 5/95 dated 16.1.1995. The detenu, despite registering the aforesaid two offences, did not stop his nefarious activities. Another offence was registered against him at Gomtipur Police Station, vide CR No. 169/99 dated 26.7.99 for offences punishable under section 120 (B), 153, 143, 147, 148, 149, 307, 436, 427 of the Indian Penal Code and section 135(1) of the Bombay Police Act. The Magistrate before whom the accused was produced granted remand and the detaining authority had apprehension that after the completion of remand period, it is likely that the detenu may be released on bail. The detaining authority has also pointed out that the detenu is a dangerous person. In the past he caused injuries to innocent persons. He is in the habit of snatching essential commodities from the venders and threatening them if money is demanded. He was stating that if Hindu vendors want to do business in Muslim locality, he must be paid money. The detenu demanded amount from an innocent person and on refusal, the innocent person was assaulted with knife and was dragged and ultimately when public gathered at the scene, the detenu rushed towards them with a dangerous weapon like a knife with the result that the public in panic ran helter-skelter. This is not a solitary incident. The detaining authority was satisfied that on account of several such activities of the detenu, the detenu is a dangerous person, and if he is released on bail, he would continue such activities as a result of which law and order situation would be disturbed.

3. Before the Court, learned advocate appearing for the detenu submitted that the continued detention is bad inasmuch as the detaining authority has not forwarded its report to the State Government as contemplated under section 3 (3) of the Act. The detaining authority has not filed any affidavit in this matter, and, therefore, it is not possible for this Court to appreciate whether requirement of section 3 (3) of the Act has been complied with by the detaining authority. In this case, the State Government has also not filed any affidavit. It was the duty of the State to place relevant material before the

Court in the form of an affidavit. The State as well as the detaining authority having failed to do so, the continued detention is required to be held as bad and illegal.

4. In the result, the continued detention is held bad and illegal. The detenu is ordered to be released forthwith if not required in any other case. Rule made absolute accordingly. No order as to costs.

csm./ (B.C. PATEL, J.)